TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1916

No. [redacted] 433

THE JOHN CHURCH COMPANY, PETITIONER,

vs.

HILLIARD HOTEL COMPANY AND HENRI DE MARTINI.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 1, 1916.

CERTIORARI AND RETURN FILED APRIL 21, 1916.

(25,213)

(25,213)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 930.

THE JOHN CHURCH COMPANY, PETITIONER,

vs.

HILLIARD HOTEL COMPANY AND HENRI DE MARTINI.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 2, 1916.

a United States Circuit Court of Appeals for the Second Circuit.

In Equity.

THE JOHN CHURCH CO., Complainant-Appellant,
against
HILLARD HOTEL COMPANY and HENRI DE MARTINI, Defendants-Appellees.

TRANSCRIPT OF RECORD.

On Appeal from District Court of the United States for the Southern District of New York.

1 *Subpœna, Filed June* 17, 1914.

The President of the United States to The Hilliard Hotel Company and Henri de Martini:

[SEAL.]

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York in the Second Circuit to answer a bill of complaint exhibited against you in the said Court in a suit in equity by The John Church Co. and to further do and receive what the said Court shall have considered in this behalf, and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars ($250).

Witness Honorable Charles M. Hough, Judge of the District Court of the United States for the Southern District of New York, on the 12th day of June in the year one thousand nine hundred and fourteen and of the Independence of the United States the one hundred and thirty-eighth.

ALEX. GILCHRIST, JR., *Clerk.*

HOUSE, GROSSMAN & VORHAUS,
115 *Broadway, Plaintiff's Solicitors.*

The defendants are required to file their answer or other defense in the above cause in the Clerk's office of this Court on or before the twentieth day after service hereof, excluding the day of said service, otherwise the bill aforesaid may be taken pro confesso.

ALEX. GILCHRIST, JR., *Clerk.*

2 *Bill of Complaint, Filed June* 12, 1914.

District Court of the United States, Southern District of New York.

In Equity.

To the Honorable Judges of the District Court of the United States for the Southern District of New York, sitting as a court of equity:

The John Church Co., a corporation duly incorporated by and under the laws of the State of Ohio, and a citizen and resident of the State of Ohio, doing business in the Borough of Manhattan, City of New York, brings this bill of complaint against the Hillard Hotel Company, a corporation duly incorporated by and under the laws of the State of New York, and a citizen and resident of the State of New York, doing business in the Borough of Manhattan, City of New York, and Henri de Martini, an alien resident of the State of New York, hereinafter designated as defendants.

Thereupon your orator complains and says:

First. This is a suit arising under the Copyright Laws of the United States.

Second. Upon information and belief, that heretofore and prior to the 23rd day of January, 1913, one John Philip Sousa, a citizen and resident of the State of New York, was the originator and composer of an original musical composition, known as a Lyric Comedy, entitled "The Glass Blowers," otherwise known as "The American Maid," which was composed by him for the purpose of public performance for profit, and that the said composition as composed contained therein a certain March entitled "From Maine to

3 Oregon," which was an integral part of the said composition, and composed as a part thereof for the purpose as aforesaid, and that the notation of an instrumentation of the said March "From Maine to Oregon" for the purpose of its production by instruments thereon designated is annexed hereto, marked "A" and made a part of this bill of complaint.

Third. That thereafter the said John Philip Sousa duly assigned and transferred to your orator all and singular his right, title and interest in and to the said musical composition entitled "The Glass Blowers," as aforesaid, and in and to the copyright thereof, including amongst its numbers the said march "From Maine to Oregon," hereinbefore referred to, and thereupon, to wit, on the 23rd day of January, 1913, your orator, as proprietor of the said musical composition, under such assignment as aforesaid, duly filed and caused to be recorded in the office of the Librarian of Congress at Washington, D. C., the title of the said musicial composition, and a certificate of the said record of the said title is annexed hereto, marked "B" and made part of this complaint, and that at the time of the recording of the said title the fee required by law was duly paid to the said Librarian of Congress.

Fourth. That thereafter, to wit, on the 11th day of February, 1913, your orator, as proprietor as aforesaid, under the assignment

aforesaid, duly filed and caused to be recorded in the office of the Librarian of Congress at Washington, D. C., the title of the said part of the said musical composition known as the said March "From Maine to Oregon" under its said designation, and that a certificate of the recording of the said title is annexed hereto, marked "C" and made a part of this complaint, and that at the time of the recording of the said title the fee required by law was duly paid to
4 said Librarian of Congress.

Fifth. That thereafter your orator duly published the said March "From Maine to Oregon," and that each copy of the said musical composition published as aforesaid had imprinted on the title page thereof the words "Copyright MCMXIII by the John Church Co."

Sixth. That thereafter, and prior to the commencement of this action, there were duly deposited in the office of the Librarian of Congress two copies of the best editions of the said composition, published as aforesaid, but that by reason of the premises your orator duly obtained a copyright under the Copyright laws of the United States upon the said musical composition for the term of twenty-eight (28) years from the date of the deposit, and the sole right and liberty of publication, producing, reproducing, copyrighting, publishing and vending such musical composition, including the said march "From Maine to Oregon."

Seventh. Upon information and belief, that the defendants wrongfully, and in violation of the copyright and right of performance obtained by your orator, to wit, on the 27th day of May, 1914, at a place known as the Hotel Vanderbilt, situate on the northwest corner of 34th Street and Park Avenue, in the Borough of Manhattan, City of New York, publicly performed for profit the said musical composition "From Maine to Oregon" by an orchestra and pursuant to the orchestration as contained in Exhibit "A" annexed hereto, and that the said performance took place in the said hotel owned and conducted by the defendant Hilliard Hotel Company, and under the leadership of the defendant Henri de Martini, conducted by him in the presence of a large audience and at a public con-
5 cert.

Eighth. That the said performance so had was without the license, authority or consent of your orator, and in violation of the copyright and performing right obtained by it as aforesaid, and to the damage of your orator in the sum of Fifty ($50) dollars.

Ninth. Upon information and belief, that the defendants have threatened and are about to continue the violations of your orator's copyright obtained as aforesaid, by public performance at the said hotel of the said musical composition annexed hereto, marked "A," and that unless enjoined and restrained from such performance this orator will sustain material injury and be seriously damaged in its copyright and performing right acquired and possessed as aforesaid, and that it will be impossible to ascertain or compute the amount of damage which may be thus sustained by your orator.

Tenth. That by reason of the premises this orator has not an adequate remedy at law.

Your orator therefore prays:

I. That process of subpœna issue herein directed to the said Hilliard Hotel Company and Henri de Martini, commanding them, and each of them, to appear and answer each and every allegation herein contained, but not under oath, an answer under oath being hereby expressly waived the same and as fully as if directly interrogated as to each.

II. That an injunction issue herein perpetually enjoining and restraining the defendants, and each of them, their attorneys,
6 agents and employees and workmen, and all claiming under them, from publicly, or otherwise, producing, reproducing or performing, or causing to be produced, reproduced or performed, the said musical composition, "From Maine to Oregon," or any imitation thereof, in whole or in part, and from in anywise infringing upon your orator's copyright to the said musical composition in any way.

III. That a preliminary injunction issue herein enjoining and restraining the defendants as prayed for in the next preceding paragraph.

IV. That your orator recover the sum of Fifty ($50) dollars for each and every performance of the said musical composition had, or which may be had, in violation of the said copyright.

V. That your orator may have such other and further relief in the premises as the equities of the case may require.

HOUSE, GROSSMAN & VORHAUS,
Solicitors for Complainant.

No. 115 Broadway, Borough of Manhattan, New York City.

WM. GROSSMAN,
Of Counsel for Complainant.

7 UNITED STATES OF AMERICA,
Southern District of New York,
County of New York, ss:

Walter Leroy Coghill, being duly sworn, deposes and says: That — is the manager of the New York branch of The John Church Co., the complainant corporation herein, and he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be based upon information and belief, and as to those matters he believes it to be true.

That the reason why this verification is not made by the complainant but by deponent is that the complainant is a foreign corporation, and that the reason why this verification is not made by an officer or director of the complainant is the fact that none of the officers or directors of the complainant corporation reside or are within the County of New York or within the Southern District of New York, and that most of the material allegations of the bill of complaint herein are due to the personal knowledge of this deponent, and as to the other facts therein alleged, information thereof has been acquired by this deponent in the course of the

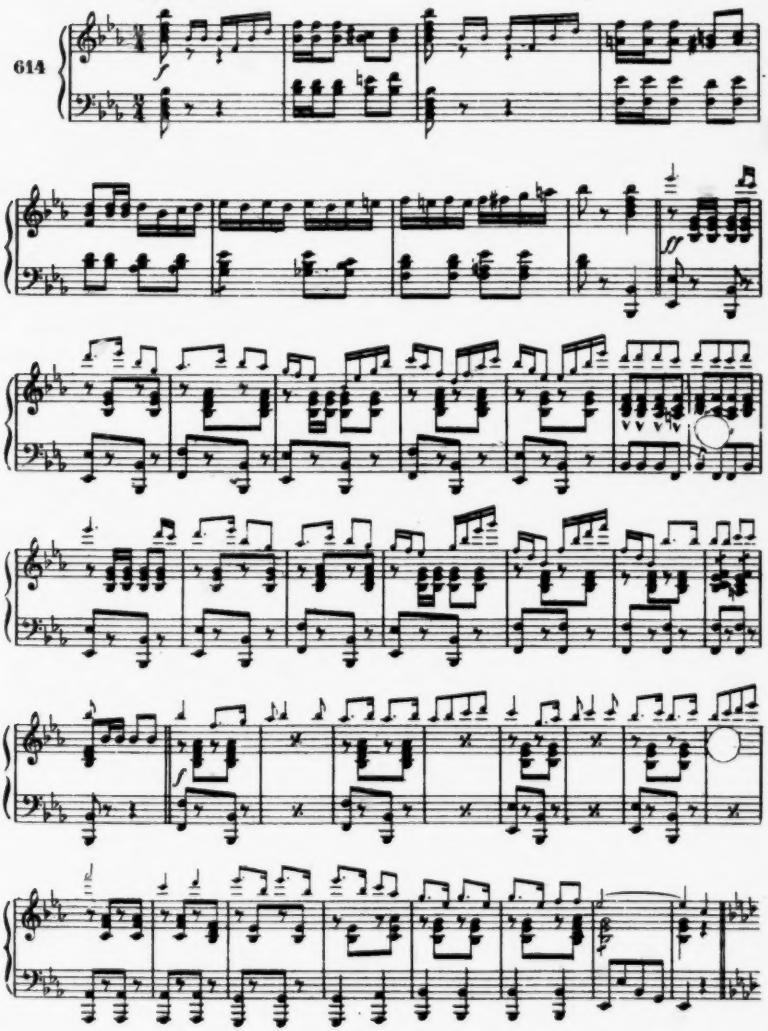
From Maine to Oregon

March

Piano

From the "Glass Blowers"

JOHN PHILIP SOUSA

Brillante

Copyright, MCMXIII, by The John Church Company
International Copyright

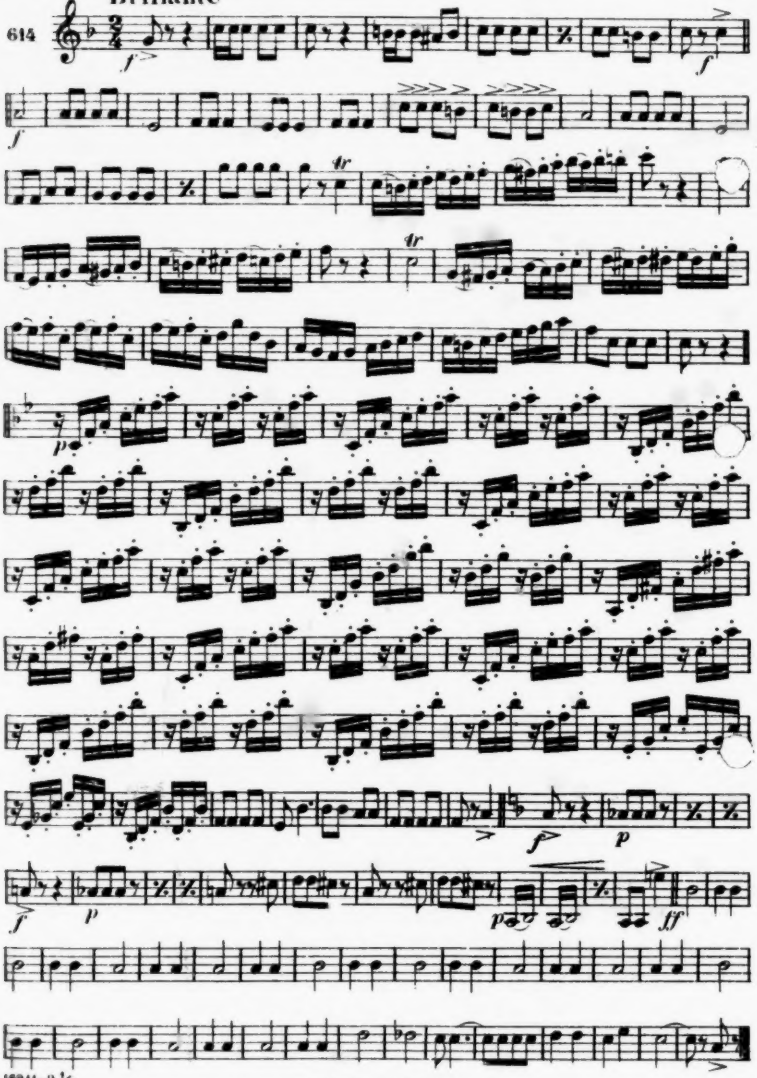
From Maine to Oregon

March

From the "Glass Blowers"

2d Clarinet in B♭

JOHN PHILIP SOUSA

Brillante

From Maine to Oregon

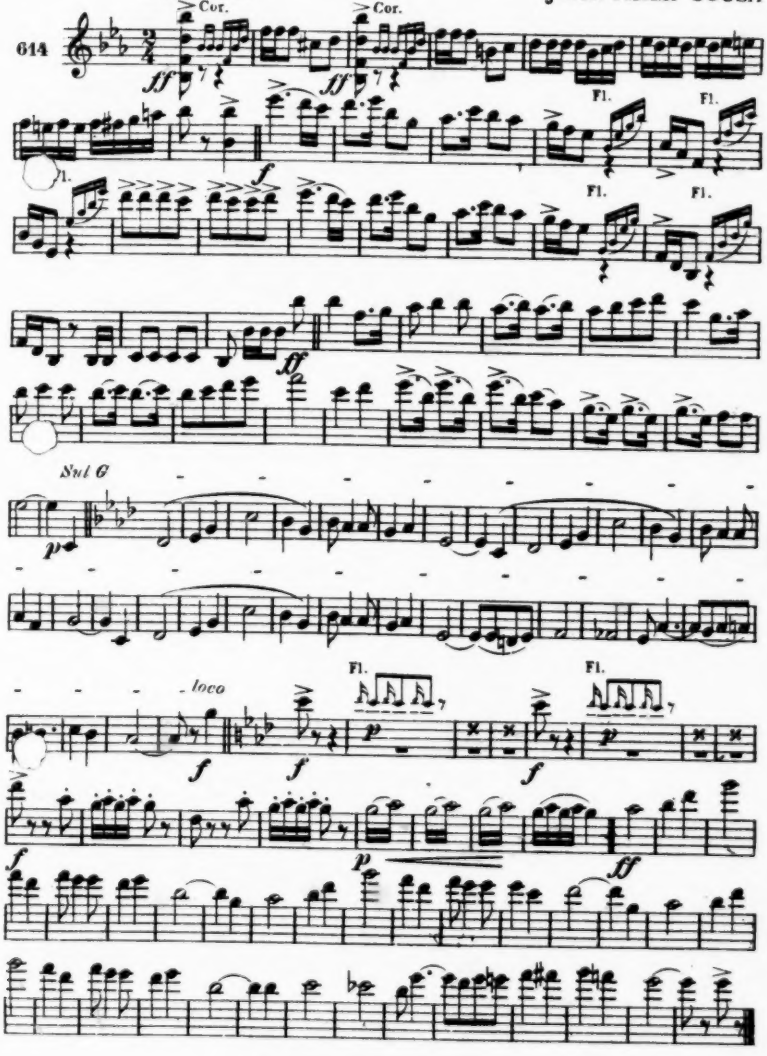
March

1st Violin

From the "Glass Blowers"

Brillante

JOHN PHILIP SOUSA



Copyright MCMXIII by The John Church Company
International Copyright

From Maine to Oregon

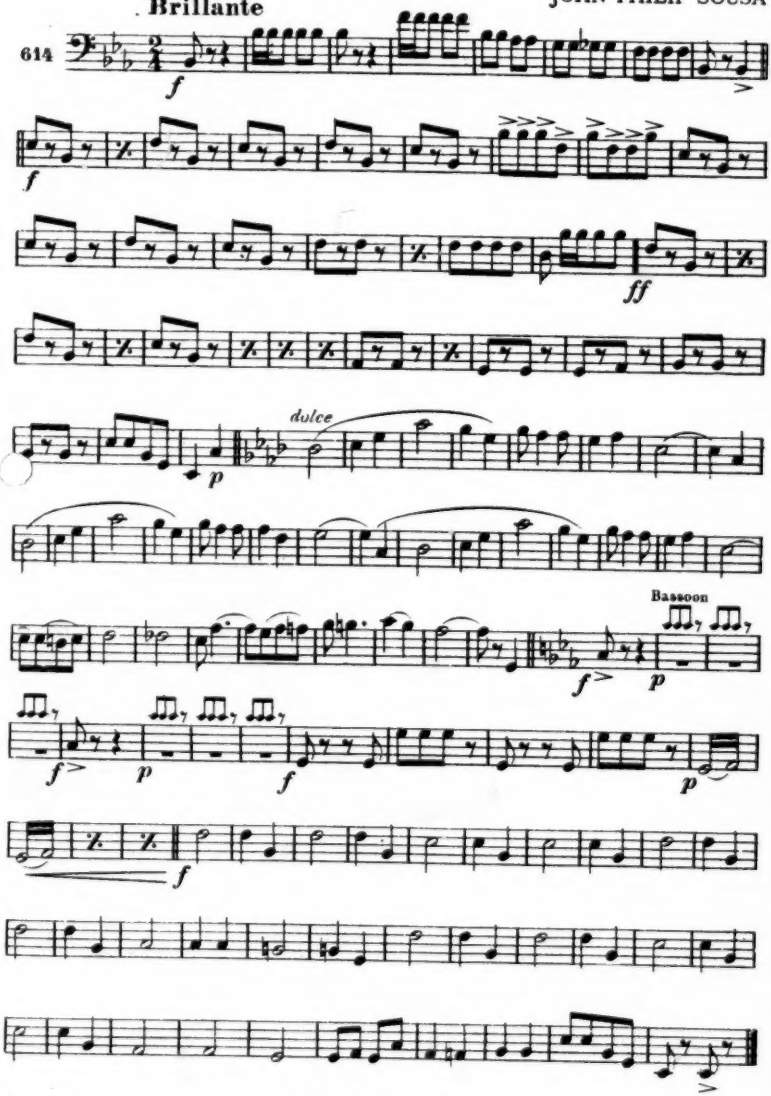
Cello

March

From the "Glass Blowers"

JOHN PHILIP SOUSA

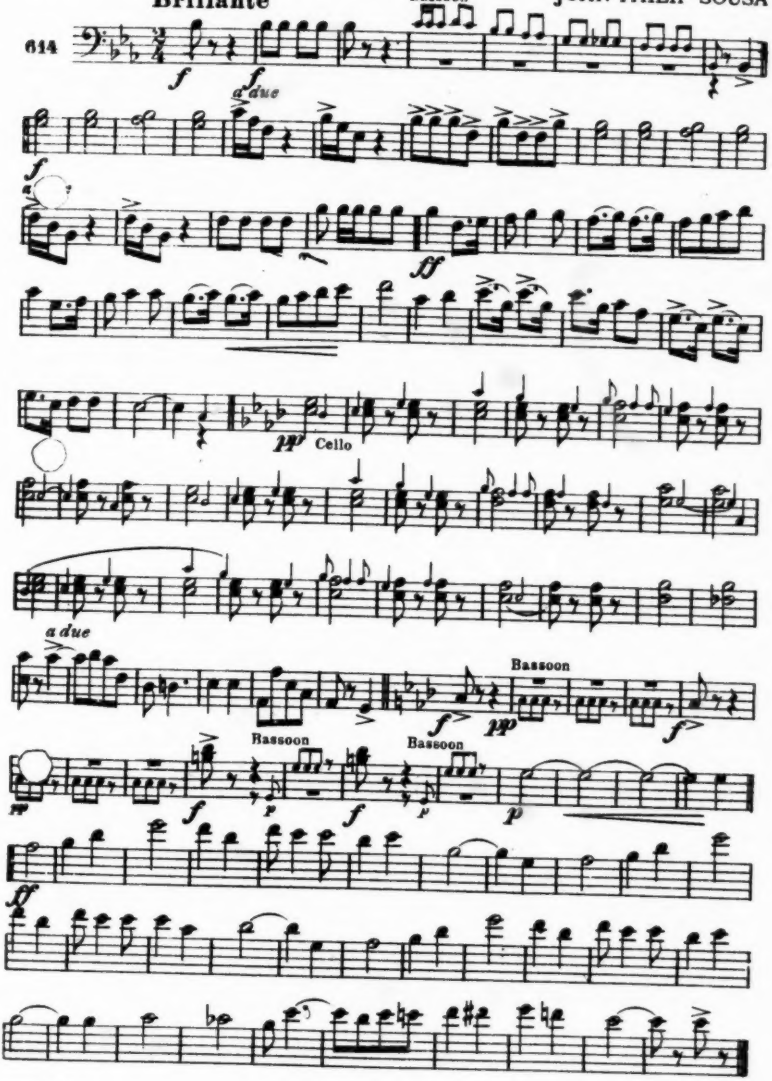
Brillante



From Maine to Oregon

March

1st & 2d Trombones From the "Glass Blowers"

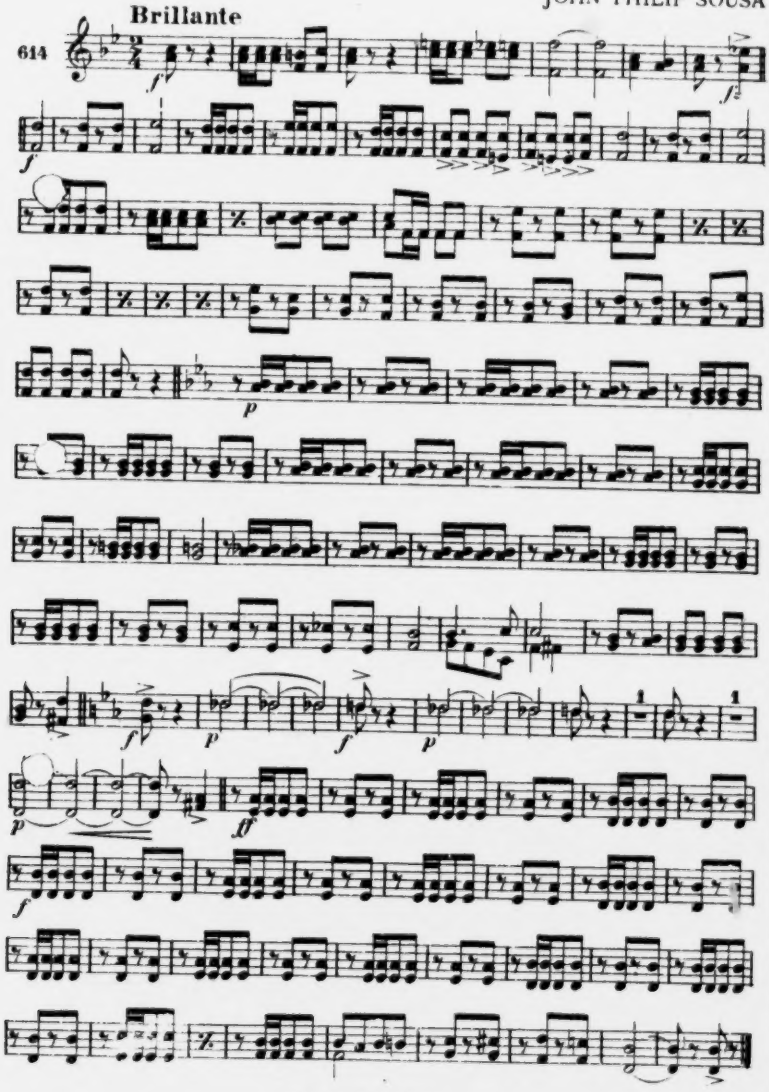
Brillante JOHN PHILIP SOUSA

From Maine to Oregon

March

From the "Glass Blowers"

Horns in F

JOHN PHILIP SOUSA

Brillante

From Maine to Oregon

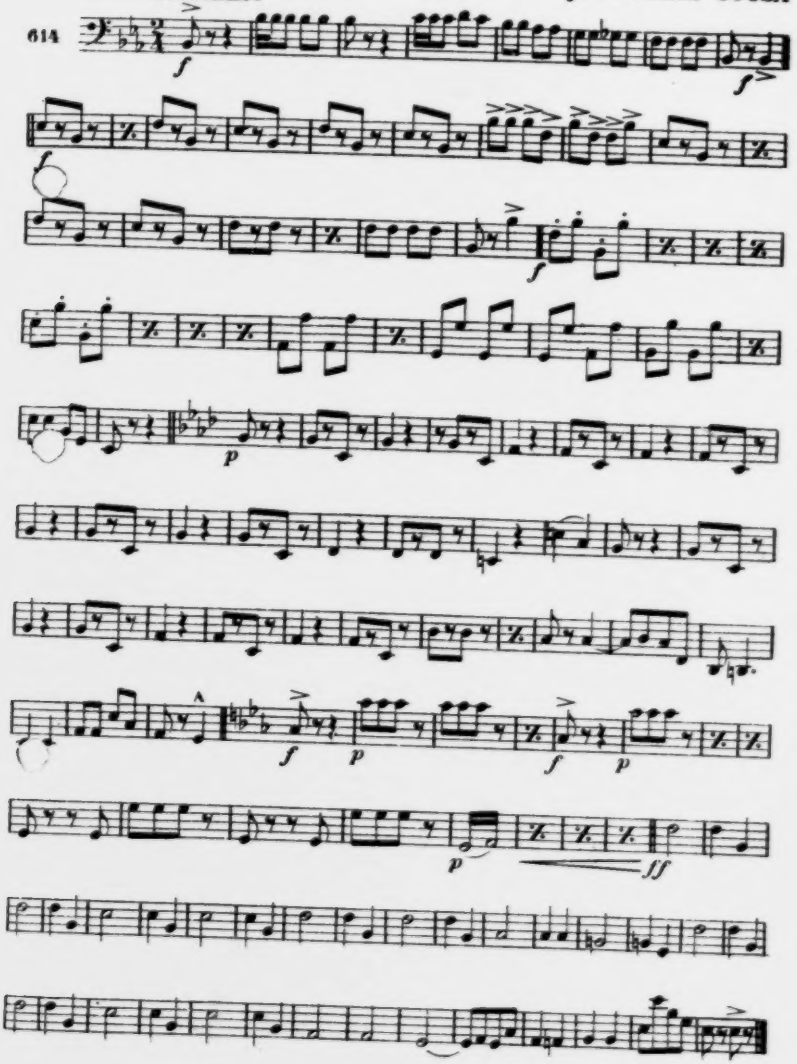
March

Bassoons

From the "Glass Blowers"

Brillante

JOHN PHILIP SOUSA



From Maine to Oregon

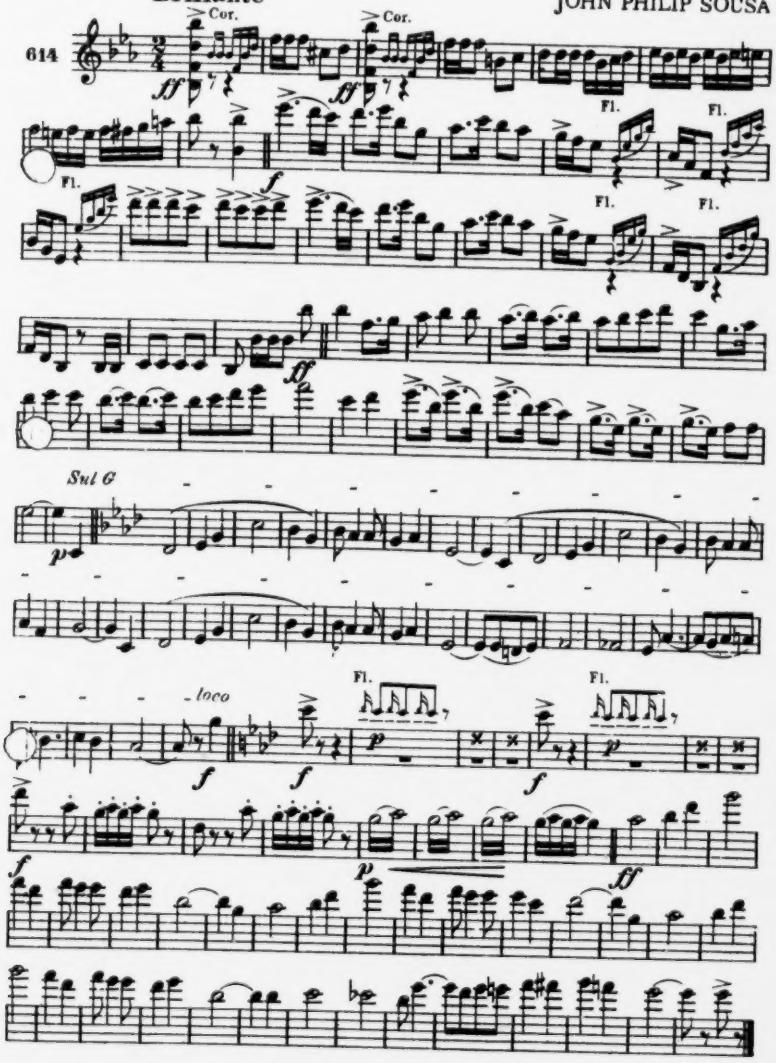
March

1st Violin

From the "Glass Blowers"

Brillante

JOHN PHILIP SOUSA



Copyright MCMXIII by The John Church Company
International Copyright

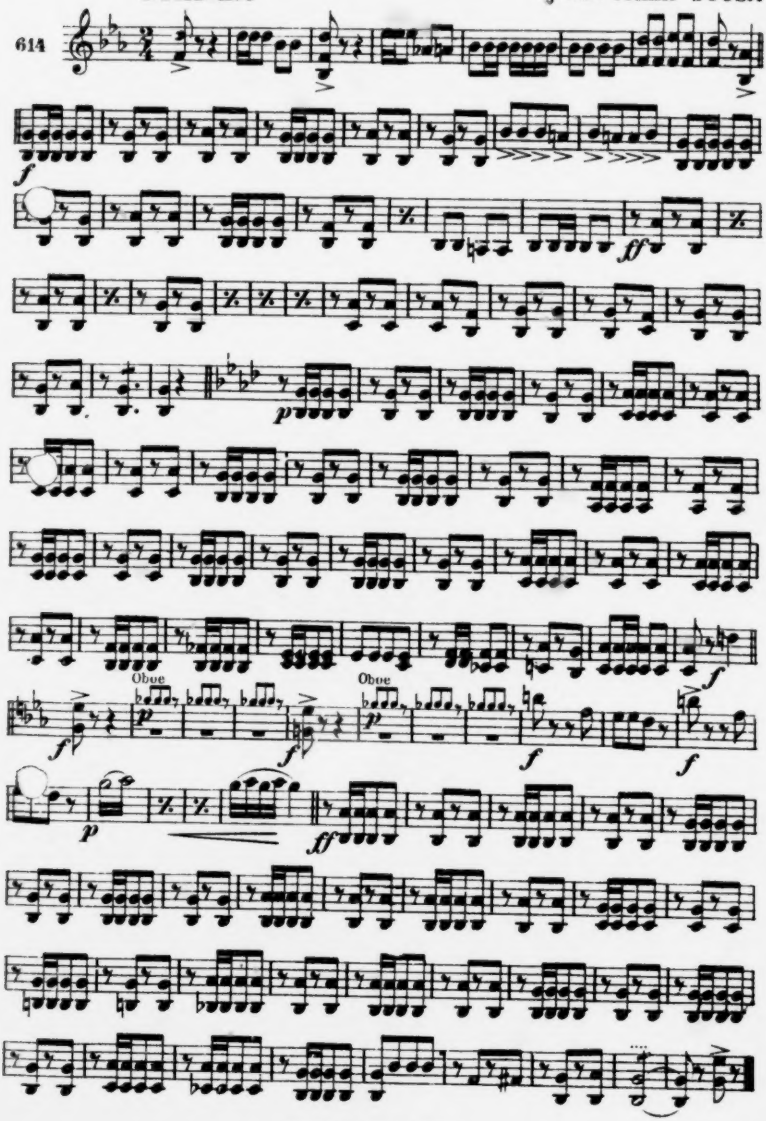
From Maine to Oregon

March

From the "Glass Blowers"

2d Violin

Brillante

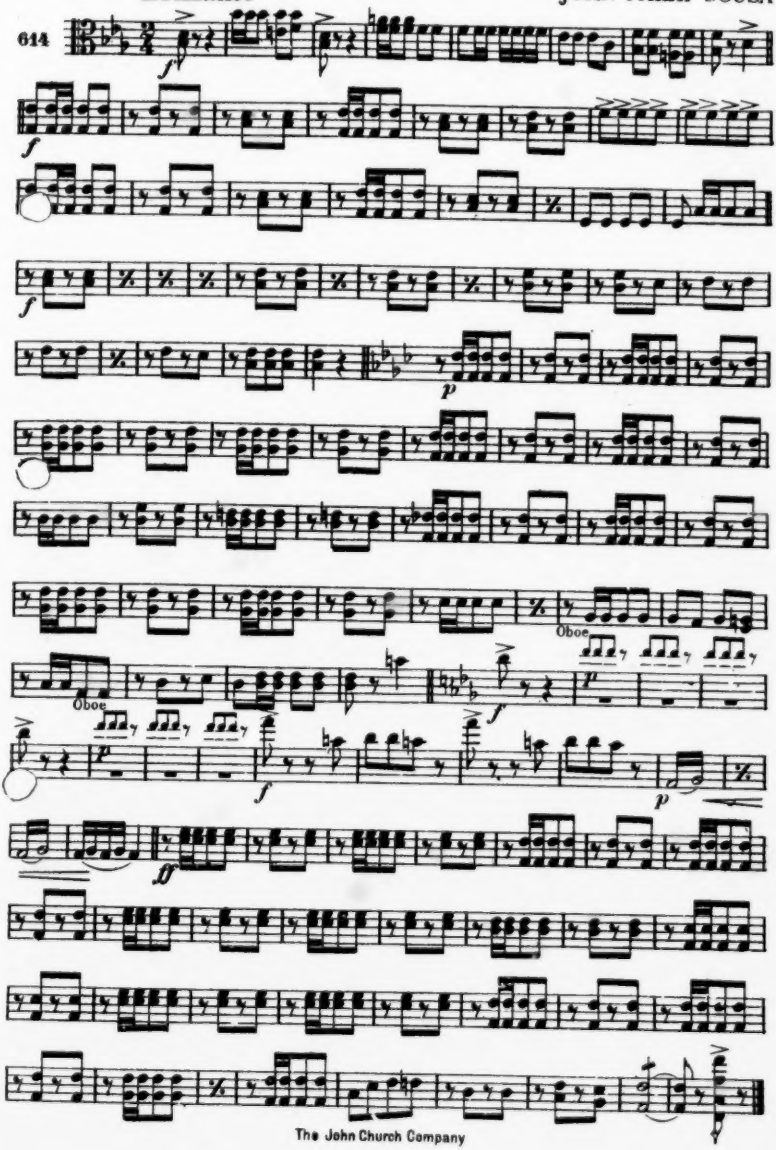
JOHN PHILIP SOUSA

From Maine to Oregon

Viola

March

From the "Glass Blowers"

Brillante

JOHN PHILIP SOUSA

From Maine to Oregon

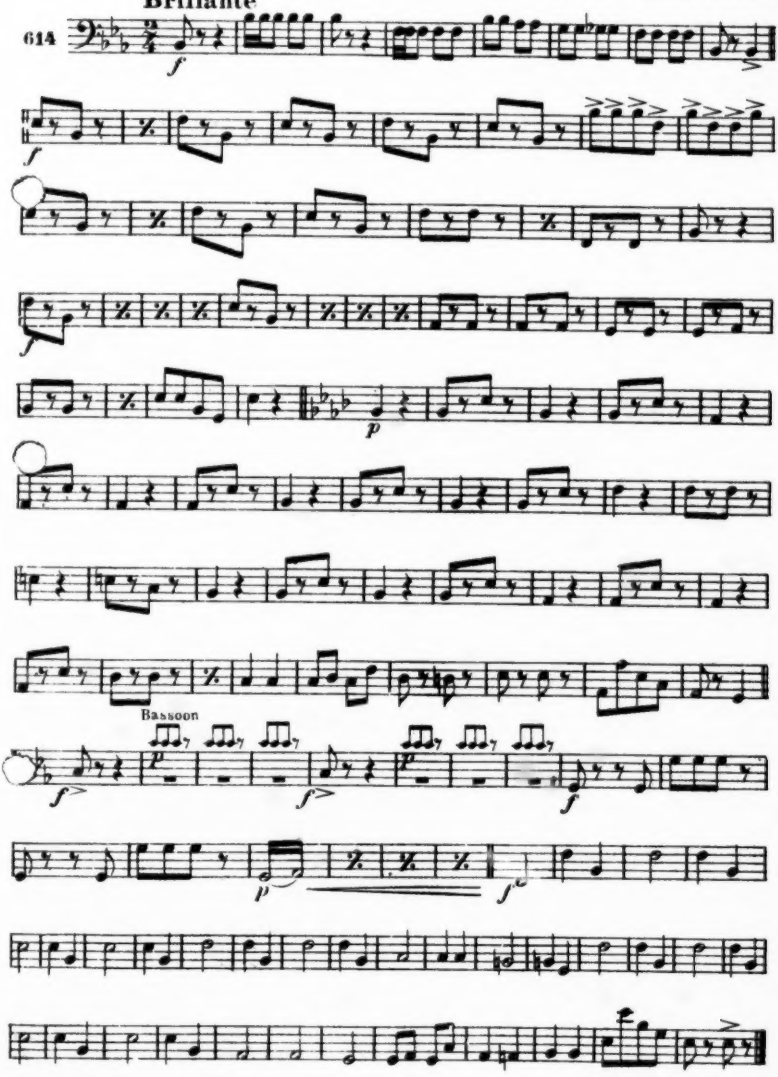
March

Bass

From the "Glass Blowers"

JOHN PHILIP SOUSA

Brillante



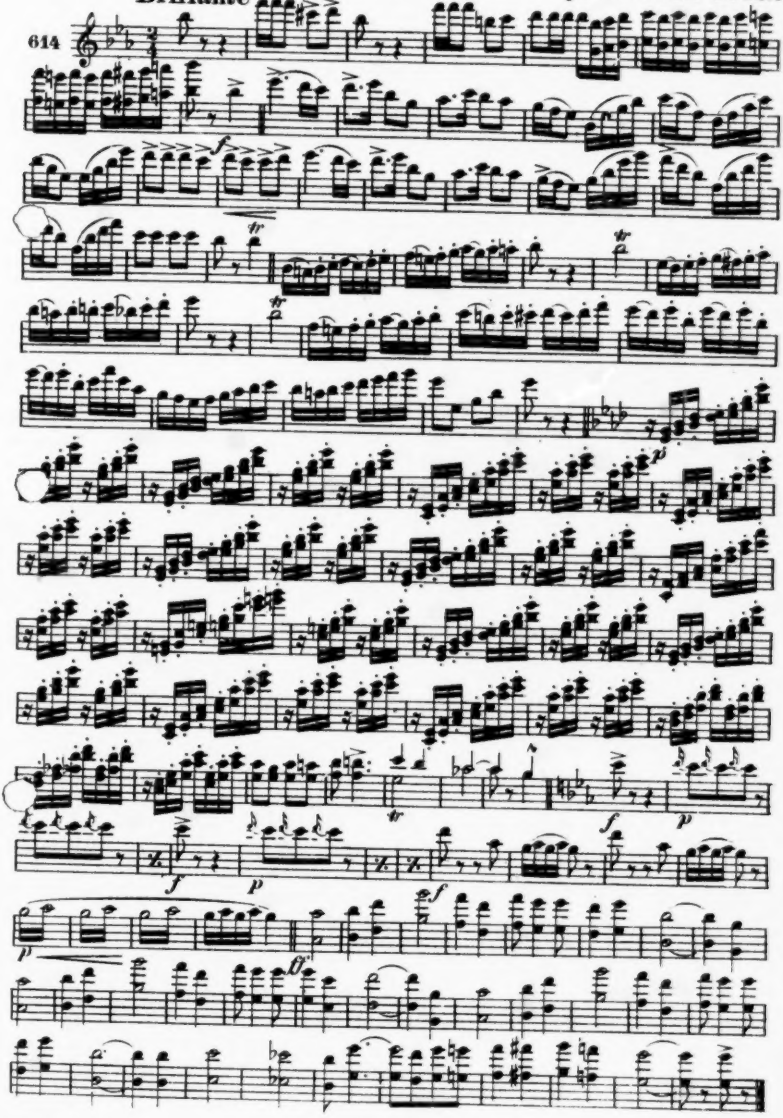
From Maine to Oregon

Flute & Piccolo

March

From the "Glass Blowers"

JOHN PHILIP SOUSA

Brillante

From Maine to Oregon

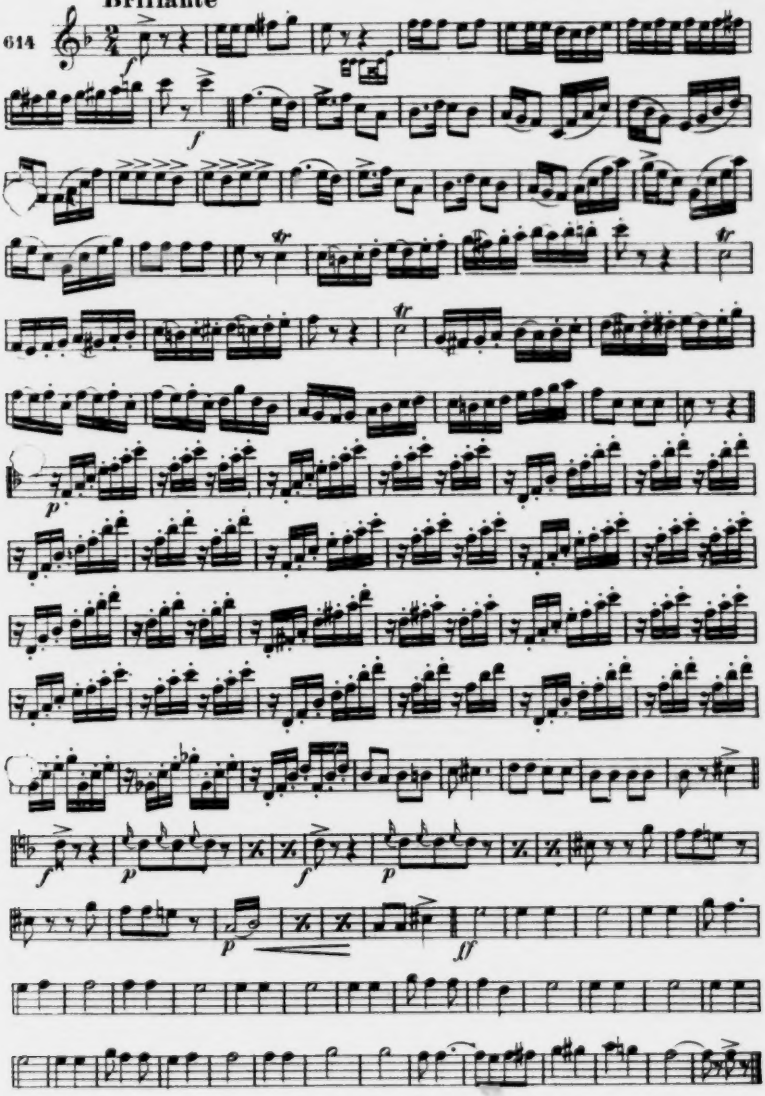
March

From the "Glass Blowers"

JOHN PHILIP SOUSA

1st Clarinet in B♭

Brillante



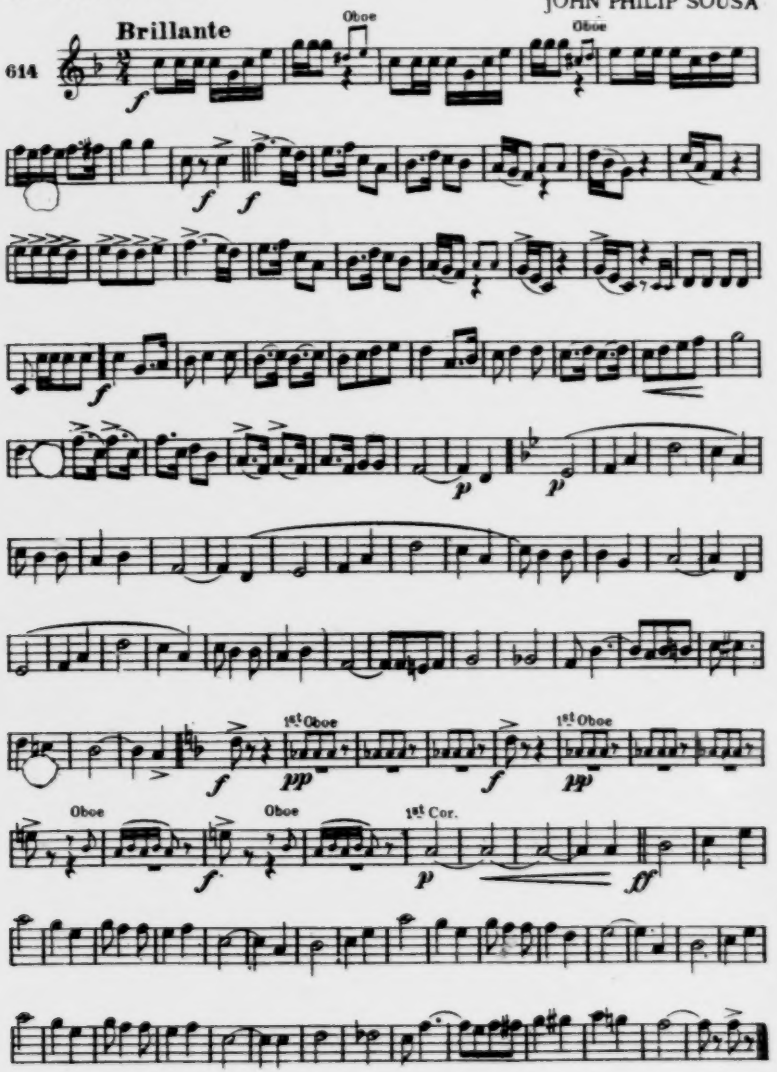
From Maine to Oregon

March

1st Cornet in B♭

From the "Glass Blowers"

JOHN PHILIP SOUSA



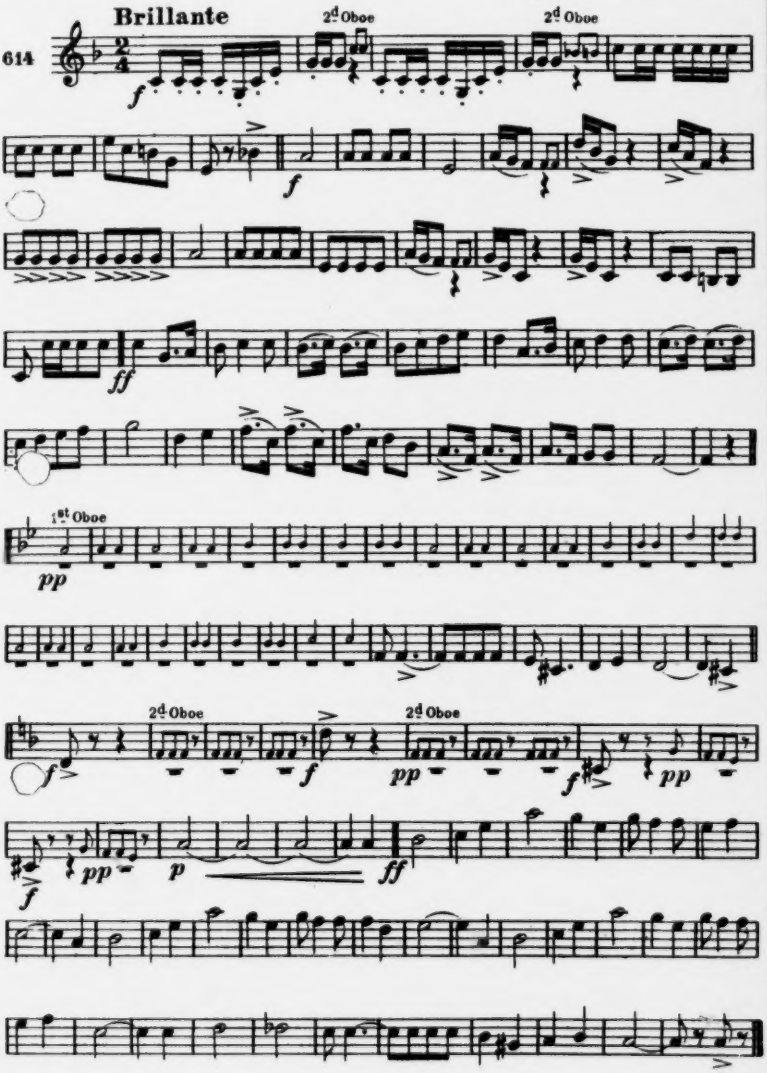
From Maine to Oregon

March

2d Cornet in B♭

From the "Glass Blowers"

JOHN PHILIP SOUSA



From Maine to Oregon

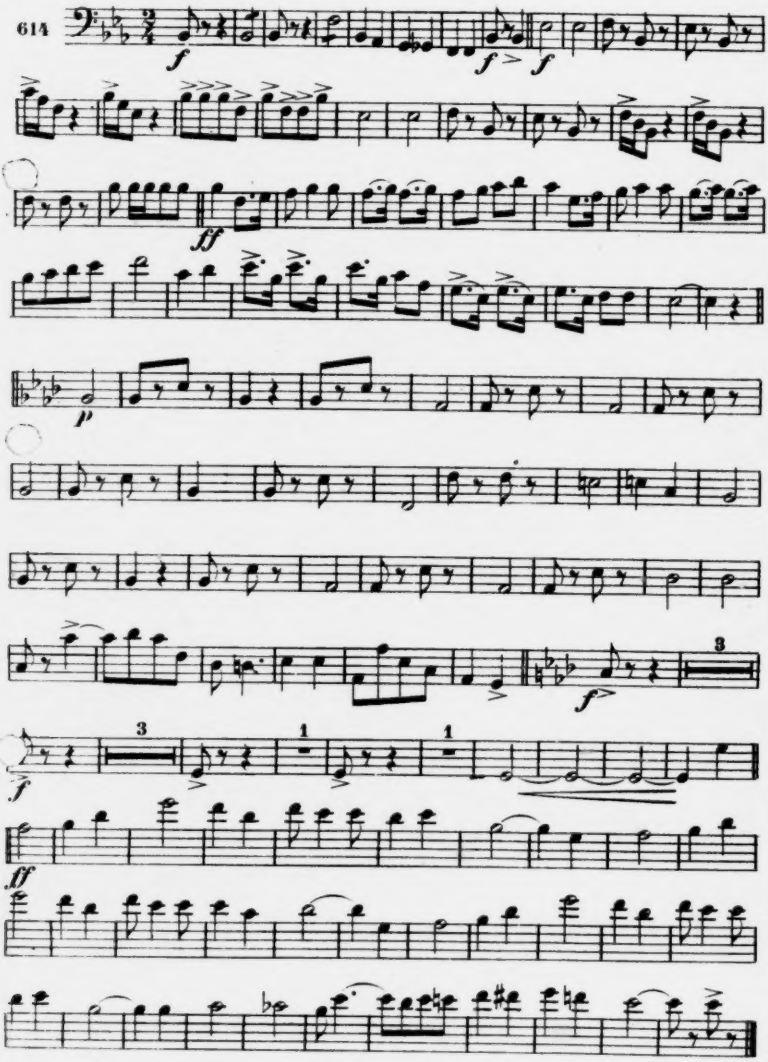
March

From the "Glass Blowers"

3d Trombone

JOHN PHILIP SOUSA

Brillante



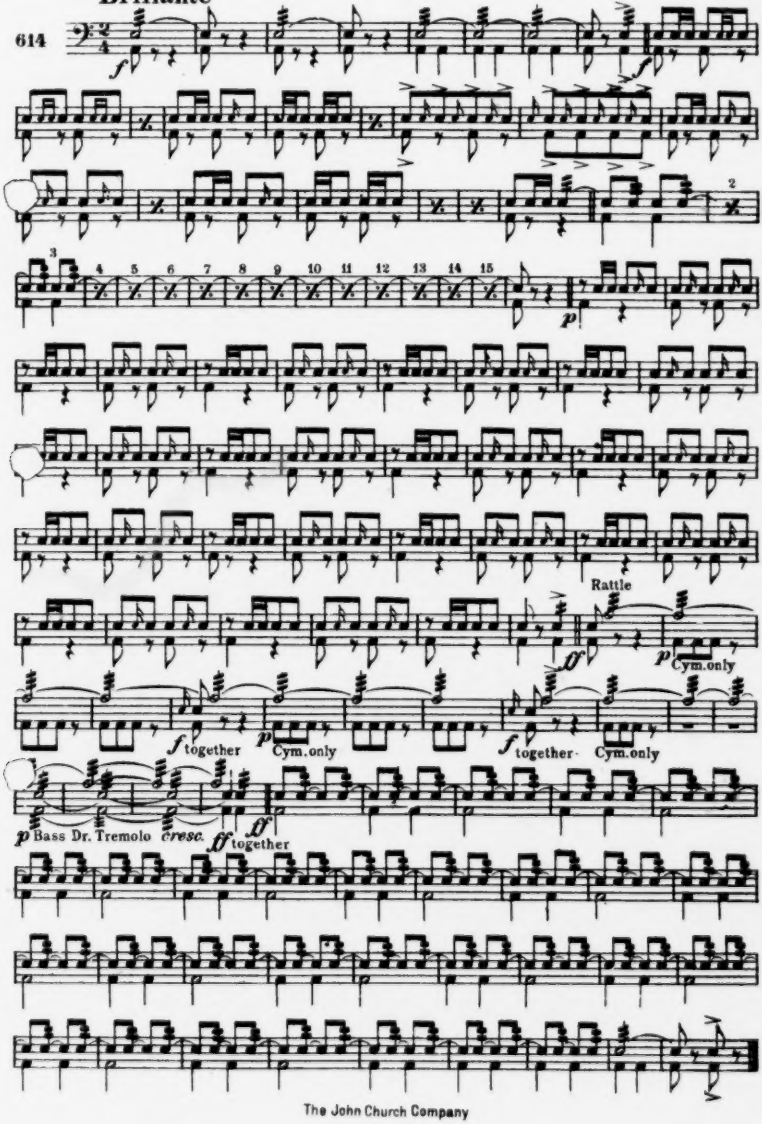
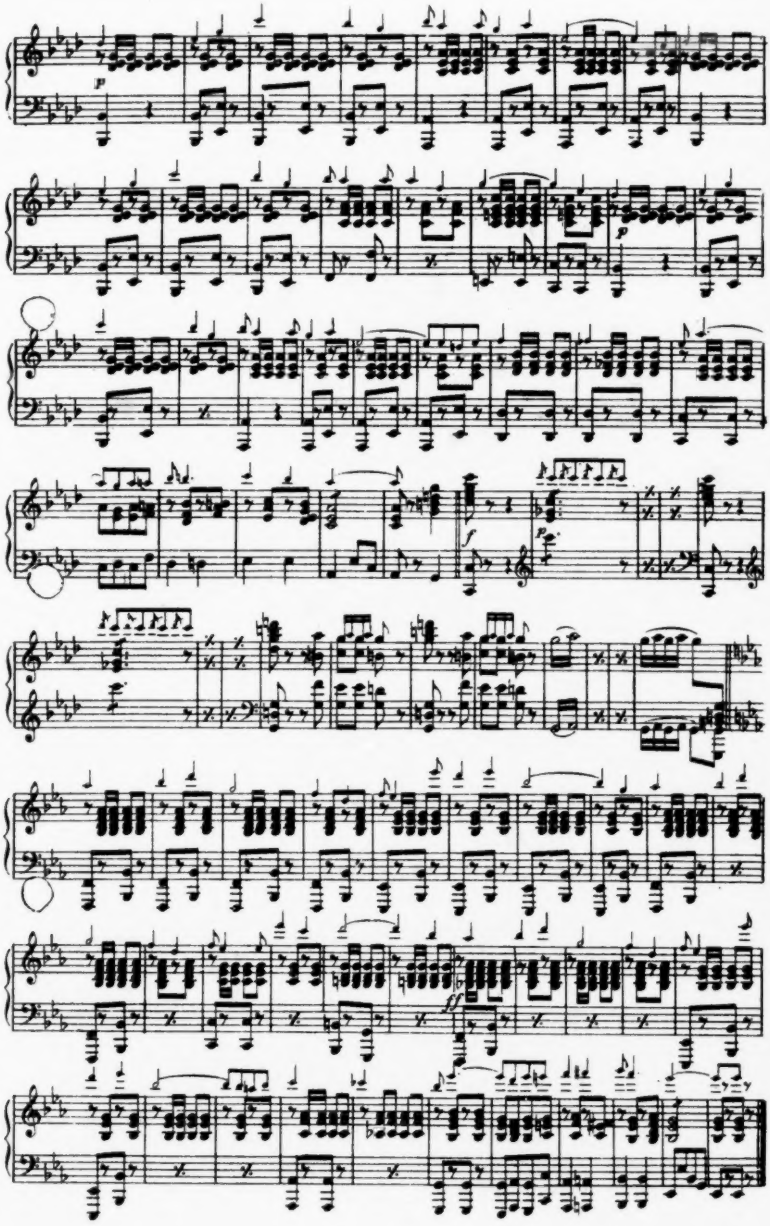
From Maine to Oregon

March

Drums

From the "Glass Blowers" JOHN PHILIP SOUSA

Brillante



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management of the complainant's business within the City of New York, and that none of the said facts are within the personal knowledge of any of the officers or directors of the complainant corporation.

WALTER LEROY COGHILL.

Sworn to before me this 11th day of June, 1914.
[SEAL.] W. J. J. CULROSS,
Notary Public No. 616, *New York County.*

8 UNITED STATES OF AMERICA,
Southern District of New York,
County of New York, ss:

Walter Leroy Coghill, being duly sworn, deposes and says: That he resides at 85 Sherman Street, in the Borough of Kings, City of New York, that he is the manager of the New York branch of The John Church Company, and is in exclusive charge of its publication business in the City of New York. That this deponent has personal knowledge of all and singular the matters contained and stated in the foregoing bill of complaint, excepting only as to the infringement on the part of the defendants therein alleged, and as to such infringements this deponent refers to the affidavits of George J. Wetzel, Thomas P. Rafferty and Lucien Courtois, annexed hereto.

WALTER LEROY COGHILL.

Sworn to before me this 11th day of June, 1914.
[SEAL.] W. J. J. CULROSS,
Notary Public No. 616, *New York County.*

9 EXHIBIT A.

(Music.)

(Here follows sheet music marked A to S.)

10 EXHIBIT B.

Copyright Office of the United States of America,

Library of Congress,

Washington, D. C.

Certificate of Copyright Registration.

This is to certify, in conformity with section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, that two copies of the musical composition named

herein have been deposited in this Office under the provisions of the said Act, and that an entry for copyright for the first term of 28 years from the date of publication thereof has been duly registered in the name of The John Church Company, Cincinnati, Ohio (name and address of claimant), musical composition entitled The Glass Blowers. A lyrical comedy. Book by Leonard Liebling. Music by John Philip Sousa. Vocal score.

Date of publication, January 23, 1913.

Copies received January 23, 1913.

Entry: Class E, XXc, No. 304286.

[SEAL.] ERNEST BRUNCKEN,
Assistant Register of Copyrights.

11 EXHIBIT C.

Copyright Office of the United States of America,

Library of Congress,

Washington, D. C.,

Certificate of Copyright Registration.

This is to certify, In conformity with section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, that two copies of the Musical Composition named herein have been deposited in this Office under the provisions of the said Act, and that an entry for copyright for the first term of 28 years from the date of publication thereof has been duly registered in the name of The John Church Company, Cincinnati, Ohio (name and address of claimant) Musical Composition entitled From Maine to Oregon. March from the "Glass Blowers" by John Philip Sousa, of United States. Full orchestra.

Date of publication, February 11, 1913.

Copies received, February 11, 1913.

Entry, Class E. XXc, No. 304858.

[SEAL.] ERNEST BRUNCKEN,
Assistant Register of Copyrights.

12 *Answer of Defendant Hilliard Hotel Company, Filed March 6, 1915.*

District Court of the United States, Southern District of New York.

THE JOHN CHURCH COMPANY, Complainant,
against
HILLIARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

Hilliard Hotel Company, one of the defendants, answering the bill of complaint herein:

First. Denies each and every allegation contained in paragraph marked "Seventh" of the bill of complaint herein, except that this

defendant admits that the said musical composition "From Maine to Oregon" was performed by an orchestra and pursuant to the orchestration as contained in Exhibit "A" annexed to the bill of complaint, and that said performance took place in the said hotel owned and conducted by the defendant Hilliard Hotel Company and under the leadership of the defendant Henri de Martini.

Second. Denies each and every allegation contained in paragraphs marked "Eighth" and "Ninth" of the bill of complaint herein.

13 For a first separate and distinct defense to the alleged cause of action contained in the bill of complaint herein, this defendant alleges:

Third. That the complainant, The John Church Company, published the musical composition entitled "From Maine to Oregon," mentioned and described in the bill of complaint herein, and sold copies thereof to this defendant and the public generally.

Fourth. That by virtue thereof this defendant was authorized and empowered by the complainant to perform said musical composition or cause same to be performed in the dining-room of the Vanderbilt Hotel in the Borough of Manhattan, City of New York, as herein set forth.

Fifth. That no charge was made by this defendant for admission to the dining-room in which said music was performed, nor for the privilege of hearing such performance. No additional charge was made for meals furnished at the time when such music was performed over the charge made when there was no music.

For a second separate and distinct defense to the alleged cause of action contained in the bill of complaint herein, this defendant alleges:

Sixth. That the musical composition entitled "From Maine to Oregon," mentioned and described in the bill of complaint herein, was not performed or caused to be performed by this defendant publicly for profit.

14 For a third separate and distinct defense to the alleged cause of action contained in the bill of complaint herein, this defendant alleges:

Seventh. That the bill of camplaint herein does not state facts sufficient to constitute a cause of action under the Copyright Act approved March 4, 1909, as amended.

Wherefore, the defendant Hilliard Hotel Company prays that the bill of complaint herein may be dismissed, with costs.

HILLIARD HOTEL COMPANY,
By CAMPBELL & BOLAND, *Solicitors.*

51 Chambers Street, Borough of Manhattan, City of New York.

CHARLES J. CAMPBELL,
Of Counsel.

15 *Answer of Defendant de Martini, Filed March 6, 1915.*

District Court of the United States, Southern District of New York.

THE JOHN CHURCH COMPANY, Complainant,
against
HILLIARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

Henri de Martini, one of the defendants, answering the bill of complaint herein:

First. Denies each and every allegation contained in paragraph marked "Seventh" of the bill of complaint herein, except that this defendant admits that the said musical composition "From Maine to Oregon" was performed by an orchestra and pursuant to the orchestration as contained in Exhibit "A" annexed to the bill of complaint, and that said performance took place in the said hotel owned and conducted by the defendant Hilliard Hotel Company and under the leadership of the defendant Henri de Martini.

Second. Denies each and every allegation contained in paragraphs marked "Eighth" and "Ninth" of the bill of complaint herein.

16 For a first separate and distinct defense to the alleged cause of action contained in the bill of complaint herein, this defendant alleges:

Third. That the complainant, The John Church Company, published the musical composition entitled "Form Maine to Oregon," mentioned and described in the bill of complaint herein, and sold copies thereof to this defendant and the public generally.

Fourth. That by virtue thereof this defendant was authorized and empowered by the complainant to perform said musical composition or cause same to be performed in the dining-room of the Vanderbilt Hotel, in the Borough of Manhattan, City of New York, as herein set forth.

Fifth. That no charge was made by this defendant for admission to the dining-room in which said music was performed, nor for the privilege of hearing such performance. On information and belief, that no additional charge was made for meals furnished at the time when such music was performed over the charge made when there was no music.

For a second separate and distinct defense to the alleged cause of action contained in the bill of complaint herein, this defendant alleges:

Sixth. That the musical composition entitled "From Maine to Oregon," mentioned and described in the bill of complaint herein, was not performed or caused to be performed by this defendant publicly for profit.

17 For a third separate and distinct defense to the alleged cause of action contained in the bill of complaint herein, this defendant alleges:

Seventh. That the bill of complaint herein does not state facts

sufficient to constitute a cause of action under the Copyright Act approved March 4, 1909, as amended.

Wherefore, the defendant Henri de Martini prays that the bill of complaint herein may be dismissed, with costs.

HENRI DE MARTINI,
By CAMPBELL & BOLAND, *Solicitors.*

51 Chambers Street, Borough of Manhattan, City of New York.

CHARLES J. CAMPBELL,
Of Counsel.

18 *Notice of Motion to Dismiss, Filed May* 14, 1915.

District Court of the United States, Southern District of New York.

In Equity.

THE JOHN CHURCH CO., Complainant,
against
HILLIARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

SIRS: Please to take notice that upon the annexed affidavit of Charles J. Campbell, verified the 4th day of May, 1915, and the stipulated statement of facts thereto annexed and made a part thereof, and upon the pleadings and all other papers and proceedings herein, a motion will be made before one of the Judges of the United States District Court for the Southern District of New York, at a Term of the said Court for the hearing of motions, to be held at the Post Office Building, in the Borough of Manhattan, City of New York, on the 14th day of May, 1915, at 10.30 o'clock A. M., or as soon thereafter as counsel can be heard, for a final judgment or decree dismissing the complaint herein against both defendants, with costs, and for such other and further relief as the Court may deem just.

Dated, New York, May 5, 1915.

Yours, &c.,

CAMPBELL & BOLAND,
Solicitors for Defendants.

51 Chambers Street, New York City.

19 To House, Grossman & Vorhaus, Esqs., Solicitors for Complainant, 115 Broadway, New York City.

Affidavit of Charles J. Campbell, Filed May 14, 1915.

District Court of the United States, Southern District of New York.

In Equity.

THE JOHN CHURCH CO., Complainant,
against
HILLARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

UNITED STATES OF AMERICA,
Southern District of New York,
County of New York, City of New York, ss:

Charles J. Campbell, being duly sworn, says that he resides in Pleasantville, Westchester County, New York; that he is a member of the law firm of Campbell & Boland, solicitors for the defendants in this action which is brought, in equity, for the purpose of procuring an injunction perpetually restraining the defendants from publicity performing a musical composition entitled "From
20 Maine to Oregon" and for damages, for an alleged violation of the complainant's copyright in and to the said musical composition.

That issue was joined herein by serving upon the solicitors for the complainant, and by filing with the Clerk of this Court on March 6, 1915, the answer of each of the defendants; and this cause is now awaiting final hearing on the calendar of this Court.

That annexed hereto and forming a part of the moving papers herein, as though fully set forth in this affidavit, is a statement of all the facts involved in this action, stipulated and agreed to by the solicitors for the complainant and all of the defendants herein.

That heretofore and on the 31st day of August, 1914, upon motion of the solicitors for the complainant herein, this Court made an order herein enjoining and restraining the defendants from publicly playing or performing the said copyrighted musical composition until the further order of this Court.

That an appeal was subsequently taken to the United States Circuit Court of Appeals for the Second Circuit from the said order, as a result of which the said order was vacated and set aside by the said United States Circuit Court of Appeals on the 10th day of February, 1915, the said Court holding that the performance of said copyrighted music by the defendants herein was not a public performance for profit within the meaning and intent of the Copyright Act of the United States and therefore did not infringe the copyright of the complainant herein.

21 Upon this affidavit, and the stipulated statement of facts hereto annexed and made a part hereof, and upon the pleadings and all other papers and proceedings herein, the defendants now move and respectfully petition this Court for a final judgment and decree dismissing the bill of complaint of the complainant, the John Church Company, against each of the defendants herein, with

costs, and for such other and further relief as the Court may deem just.

No other application has been made for the relief herein sought.

CHARLES J. CAMPBELL.

Sworn to before me this 4th day of May, 1915.

[SEAL.] HANNAH R. FRANK,
Commissioner of Deeds, New York City.

22 *Stipulation as to Facts, Filed August* 13, 1914.

District Court of the United States, Southern District of New York.

THE JOHN CHURCH CO., Plaintiff,
against
HILLIARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

The following are hereby consented to and stipulated as the existing facts in this action, for the purpose of submission thereof to, and its determination thereon by the Court, and for a final judgment to be rendered thereon:

First. That prior to the 23rd day of January, 1913, one John Philip Sousa, a citizen and resident of the State of New York, was the originator and composer of an original musical composition known as Lyric Comedy, entitled "The Glass Blowers," known as "The American Maid," which was composed by him for the purpose of public performance for profit, and that the said composition as thus composed contained a certain march, entitled, "From Maine to Oregon," which was an integral part thereof, and composed for the purpose aforesaid, and that Exhibit "A" annexed to the bill of complaint herein is a correct notation of an instrumentation of the said March "From Maine to Oregon" for the purpose of its production by musical instruments.

23 Second. That thereafter the said John Philip Sousa duly assigned and transferred to the complainant, which is a corporation, duly incorporated by and under the Laws of the State of Ohio, all and singular his right, title and interest in and to the said musical composition, entitled, "The Glass Blowers," and the said march hereinbefore described, and in and to the copyright thereof, and that thereupon on the 23rd day of January, 1913, the complainant, as proprietor of said musical composition under such assignment as aforesaid, duly filed and caused to be recorded in the office of the Librarian of Congress at Washington, D. C., the title of said musical composition and paid the fee required by law for the purpose of obtaining a copyright.

Third. That thereafter, to wit, on the 11th day of March, 1913, the complainant as proprietor as aforesaid, duly filed and caused to be recorded in the office of the Librarian of Congress at Washington, D. C., the title of the said march, "From Maine to Oregon," under that designation and paid the fee required to obtain a copyright.

Fourth. That thereafter the complainant published the said march, "From Maine to Oregon," and that each copy of the musical composition thus published had imprinted on the title page thereof the words, "Copyright MCMXIII by the John Church Co."

Fifth. That thereafter, and prior to the commencement of this action, there was duly deposited in the office of the *office* Librarian of Congress two copies of the best edition of the said composition, published as aforesaid, and that by reason of the premises the complainant obtained a copyright under the Copyright Laws of
24 the United States upon the said musical composition, "From Maine to Oregon," which was separately published, and sold to the defendant Hilliard Hotel Company, and the public generally.

Sixth. That the defendant Hilliard Hotel Company is a domestic corporation, created by and under the Laws of the State of New York, conducting and carrying on a hotel known as the Vanderbilt Hotel, situate at the corner of Park Avenue and 34th Street, in the Borough of Manhattan, City of New York, for the accommodation of travelers and guests, and that the defendant Henri de Martini is the leader of an orchestra employed by the defendant corporation and paid by it for services rendered in conducting an orchestra consisting of musicians, also paid by the defendant corporation, for the purpose of the entertainment of its guests by furnishing music in the dining room of the said hotel during mealtimes. No charge was made by defendant or its said leader for admission to the dining room in which said music was performed as aforesaid, nor for the privilege of hearing such performance. No additional charge was made for meals furnished at the time when such music was performed, over the charge made when there was no music.

Seventh. That on the 27th day of May, 1914, at the said Hotel Vanderbilt, the said defendant Henri de Martini, acting as the leader of said orchestra under said employment, for and in behalf of the defendant corporation, and by its authority and consent, caused to be performed by said musicians in the dining room of said hotel for the entertainment and in the presence of the guests
25 thereof, without any charge to them as aforesaid, the said musical composition, "From Maine to Oregon," the copyright whereof is owned by the complainant as aforesaid.

Eighth. That the said performance was without the express authority or consent of the complainant.

Ninth. That the defendants at the time of the commencement of this action intended to cause to be given similar performances at the said Hotel Vanderbilt, for the purpose and in the manner hereinbefore described, and without the express authority and consent of the complainant.

Dated, New York, N. Y., March 5, 1915.

HOUSE, GROSSMAN & VORHAUS,
Solicitors for Complainant.
CAMPBELL & BOLAND,
Solicitors for Defendants.

26 *Final Decree Dismissing Complaint, Filed May* 14, 1915.

At a Stated Term of the United States District Court for the Southern District of New York, Held at the Court House, Post-Office Building, Borough of Manhattan, City of New York, on the 14th Day of May, 1915.

In Equity.

Present: Hon. Julius M. Mayer, Judge.

THE JOHN CHURCH CO., Complainant,
against
HILLARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

The defendants having moved herein upon notice of motion, dated May 5, 1915, the affidavit of Charles J. Campbell, duly verified the 4th day of May, 1915, and the stipulated statement of facts, both annexed to said notice of motion and made a part thereof, and upon the pleadings and all other papers and proceedings had herein, for a final judgment or decree dismissing the bill of complaint herein against both defendants, with costs, and for such other and further relief as to the Court may seem just; and said notice of motion having been made returnable on the 14th day of May, 1915,
and coming duly on to be heard on said day; and the Court
27 having heard Charles J. Campbell, Esq., of counsel for the defendants, and Charles Goldzier, Esq., of counsel for the complainant; and due deliberation having been had, it is

Ordered, adjudged and decreed that the said bill of complaint herein be, and the same hereby is, dismissed against both defendants, with costs to each of said defendants, to be taxed.

JULIUS M. MAYER,
U. S. District Judge.

28 *Petition for Appeal and Order Allowing Same, Filed November* 12, 1915.

District Court of the United States, Southern District of New York.

In Equity.

THE JOHN CHURCH CO., Complaintant,
against
HILLIARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

To the Honorables the Judges of the United States Circuit Court of Appeals for the Second District:

The John Church Co., the complainant above named, conceiving itself aggrieved by the decree of this Court, made and entered in the above-entitled action, and filed in the office of the Clerk of this

Court during the May Term, 1915, hereby appeals from said decree, to the United States Circuit Court of Appeals for the Second Circuit, and states that its reasons for said appeal are specified in the assignment of errors filed herewith, and therefore prays that this appeal may be allowed and a citation granted directed to the above-named defendant, Hilliard Hotel Company, commanding it to appear before such Circuit Court of Appeals, and to do and receive what may appertain to justice to be done in the premises, and that
29 a transcript of the record and of the proceedings and papers upon which said decree was made, after due authentication, may be sent to the United States Circuit Court of Appeals for the second District.

Dated, New York, November 11th, 1915.

HOUSE, GROSSMAN & VORHAUS,
Solicitors for the Complainant-Appellant.

Office & P. O. Address, 115 Broadway, N. Y. City.

It is ordered, that the said appeal be allowed as prayed for, this 12th day of November, 1915.

C. M. HOUGH, *U. S. D. J.*

A. G., Jr.

30 *Stipulation Waiving Bond, Filed September* 26, 1914.

District Court of the United States, Southern District of New York.

In Equity.

THE JOHN CHURCH CO., Complainant,
against
HILLIARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

The giving or filing of any bond or undertaking upon the proposed appeal herein, is hereby waived.

Dated, November 11th, 1915.

CAMPBELL & BOLAND,
Solicitors for Defendants.

31 *Citation, Filed November* 15, 1915.

By the Honorable Charles M. Hough, one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to The Hilliard Hotel Company and Mr. Henri de Martini, Greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan in the City of New York, in the District and Circuit above named, on the 11th day

of December, 1915, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein John Church Co. is appellant, and you are appellees, to show cause, if any *they* be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 12th day of November, in the year of our Lord One Thousand Nine Hundred and Fifteen, and of the Independence of the United States the One Hundred and Fortieth.

C. M. HOUGH,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

A. G., JR.

32 *Assignments of Errors, Filed November* 12, 1915.

District Court of the United States, Southern District of New York.

In Equity.

THE JOHN CHURCH CO., Complainant,
against
HILLIARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

The above-named complainant, The John Church Co., having appealed to the United States Circuit Court of Appeals for the Second Circuit from the final decree of this Court dismissing the bill of complaint made and entered in the above-entitled cause during the May Term, 1915, respectfully alleges and makes the following assignment of errors:

1st. The Court erred in determining that the plaintiff had failed to prove a cause of action.

2nd. The Court erred in refusing to the complainant any of the relief prayed for in its bill of complaint in said action.

3rd. The Court erred in dismissing the complainant's bill of complaint and granting judgment to the defendants for the costs of the action.

Wherefore, the complainant prays that the said decree of dismissal be reversed.

Dated, New York, November 11th, 1915.

HOUSE, GROSSMAN & VORHAUS,
Solicitors for Complainant-Appellant.

Office & Post Office Address, No. 115 Broadway, Borough of Manhattan, City of New York.

33 *Stipulation.*

United States District Court, Southern District of New York.

In Equity.

THE JOHN CHURCH CO., Complainant,
against
HILLIARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

It is hereby stipulated and agreed by the undersigned solicitors for the parties herein, that the foregoing and annexed printed record is a true transcript of the record upon appeal to the United States Circuit Court of Appeals, Second Circuit, as agreed upon by the parties.

Dated, New York, November 30, 1915.

HOUSE, GROSSMAN & VORHAUS,
Solicitors for Complainant-Appellant.
CAMPBELL & BOLAND,
Solicitors for Defendants-Appellees.

34 *Clerk's Certificate.*

United States District Court, Southern District of New York.

THE JOHN CHURCH CO., Complainant,
against
HILLIARD HOTEL COMPANY and HENRI DE MARTINI, Defendants.

UNITED STATES DISTRICT COURT,
Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled cause as agreed upon by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this — day of November, in the year of our Lord, one thousand, nine hundred and fifteen, and of the independence of the United States, the one hundred and fortieth.

—— ——, *Clerk.*

35 United States Circuit Court of Appeals for the Second Circuit, October Term, 1915.

No. 204.

Submitted December 23, 1915; Decided December 27, 1915.

Before Lacombe, Ward and Rogers, Circuit Judges.

THE JOHN CHURCH COMPANY, Complainant-Appellant,
vs.
HILLIARD HOTEL COMPANY and HENRI DE MARTINI, Defendants-Appellees.

Appeal from the District Court of the United States for the Southern District of New York.

Appeal from Decree Dismissing Bill for Alleged Infringement of Copyright.

Per CURIAM:

Decree affirmed with costs.
Submitted without argument.

36 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court-rooms in the Post-office Building in the City of New York, on the 6th Day of January One Thousand Nine Hundred and Sixteen.

Present: Hon. E. Henry Lacombe, Hon. Henry G. Ward, Hon. Henry Wade Rogers, Circuit Judges.

JOHN CHURCH COMPANY, Complainant-Appellant,
vs.
HILLIARD HOTEL COMPANY and Another, Defendants-Appellees.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and hereby is affirmed with costs.

E. H. L.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

37 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. John Church Co. vs. Hilliard Hotel Co. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 6, 1916. William Parkin, Clerk.

38 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 37 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of John Church Company against Hilliard Hotel Company & another, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 27th day of January in the year of our Lord One Thousand Nine Hundred and Sixteen, and of the Independence of the said United States the One Hundred and Fortieth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

[10-cent U. S. revenue stamp, canceled.]

39 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The John Church Company is appellant, and Hilliard Hotel Company and Henri de Martini are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command
40 you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the fourteenth day of April in the year of our Lord One Thousand Nine Hundred and Sixteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 25,213. Supreme Court of the United States, October Term, 1915. No. 930. The John Church Company vs. Hilliard Hotel Company et al. Writ of Certiorari.

41 United States Supreme Court.

JOHN CHURCH CO., Appellants,
against
HILLIARD HOTEL CO. and HENRI DE MARTINI, Appellees.

It is hereby stipulated and agreed by and between the attorneys for the respective parties that the transcript of record on file in the above matter may be taken as the return to the writ.

Dated, New York, April 18th, 1916.

HOUSE, GROSSMAN & VORHAUS,
Attorneys for Appellants.
CAMPBELL & BOLAND,
Attorneys for Appellees.

42 To the Honorable the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of th Supreme Court of the United States, a copy of the stipulation of counsel is hereunto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, April 18th, 1916.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[10-cent U. S. revenue stamp, canceled.]

43 [Endorsed:] 930/25213. United States Circuit Court of Appeals, Second Circuit. John Church Company v. Hilliard Hotel Company. Return to Certiorari.

44 [Endorsed:] File No. 25,213. Supreme Court U. S., October Term, 1915. Term No. 930. The John Church Company, Petitioner, vs. Hilliard Hotel Company et al. Writ of certiorari and return. Filed April 21, 1916.

OCT 2
JAMES D.

Supreme Court of the United States

OCTOBER TERM, 1916—No. 433.

THE JOHN CHURCH CO.,
Complainant-Appellant,

against

HILLIARD HOTEL COMPANY and HENRI DE MARTINI,
Defendants-Appellees.

AFFIDAVIT AND NOTICE OF MOTION TO ADVANCE CAUSE ON DOCKET AND SET DOWN FOR A DAY CERTAIN.

MOSES H. GROSSMAN,
WILLIAM GROSSMAN,
LOUIS J. VORHAUS,
Solicitors for Complainant-Appellant.

The Hecla Press, 57 Warren St., N. Y. Tel. 6280 Barclay.

Supreme Court of the United States

1

THE JOHN CHURCH CO.,
Complainant-Appellant,

against

HILLIARD HOTEL COMPANY and
HENRI DE MARTINI,
Defendants-Appellees.

Sirs:

PLEASE TAKE NOTICE that upon the record herein filed in the above-entitled court, and all proceedings herein, and the annexed affidavit, a motion will be made before this Honorable Court at a Term thereof, to be held at the Capitol, in the City of Washington, District of Columbia, on the 30th day of October, 1916, at the opening of the court, or as soon thereafter as counsel may be heard, for an order advancing the above-entitled cause, No. 433, October Term, 1916, upon the docket of the said court and setting it down for a day certain for argument, and for such other and further order or relief as may be just.

2

Dated, New York, October 13, 1916.

Yours, etc.,

3

MOSES H. GROSSMAN,
WILLIAM GROSSMAN,
LOUIS J. VORHAUS,
Solicitors for Complainant-Appellant,
Office & P. O. Address,
No. 115 Broadway,
Borough of Manhattan,
City of New York.

To:
CAMPBELL & BOLAND, Esqs.,
Solicitors for Defendants-Appellees.

SUPREME COURT OF THE UNITED STATES.

THE JOHN CHURCH CO.,
Complainant-Appellant,

against

HILLIARD HOTEL COMPANY and
HENRI DE MARTINI,
Defendants-Appellees.

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF NEW YORK, } ss:

WALTER LEROY COGHILL, being duly sworn, deposes and says: That he is the Manager of the New York branch of THE JOHN CHURCH CO., the complainant-appellant herein, and resides in the Borough of Manhattan, City of New York, State of New York.

Deponent further says that this is an appeal prosecuted by writ of certiorari from this court for the review of a decision of the United States Circuit Court of Appeals, for the Second Circuit, dismissing the complainant's complaint.

Deponent further says that the action was brought in the District Court of the United States for the Southern District of New York under the Copyright Law of the United States, for the pur-

pose of enjoining the defendants from producing 7
a certain musical composition entitled "From Maine to Oregon," being part of an operetta entitled "The Glass Blowers," copyright whereof is owned by the complainant, upon the ground that the said musical composition was publicly performed for profit at a hotel in the Borough of Manhattan, City of New York, without the consent of the complainant, the owner of the copyright.

Deponent further says that the said bill of complaint was dismissed by the District Court upon the ground that such performance was not a public performance for profit within the purview of the Copyright Act, and the dismissal of the complaint was upheld by the said Circuit Court of Appeals 8
upon that ground, pursuant to an opinion duly filed and appearing of record herein.

Deponent further says that the record upon the said appeal herein has been duly filed with this court, and that the cause is upon the docket of this court as of the October Term, 1915.

Deponent further says that the question involved in the appeal herein is of great interest to owners of copyrights and hotel-keepers throughout the United States, in view of the fact that in acceptance of the said decision and opinion a large number of hotel-keepers throughout the United States have publicly performed, and are performing, copyrighted musical and dramatico musical compositions without any authority from the several own- 9
ers of the copyrights, or the payment of any royalty or compensation for such performances.

Deponent further says that the complainant is engaged in the business of the publication, licensing and sale of copyrighted compositions, and its trade extends throughout the United States; that it is the owner of a large number of copyrighted musical

10 and dramatico musical compositions which have been and are being thus performed without the authority of the complainant, and that by reason thereof the complainant and other owners and proprietors of copyrights have lost and continue to lose large sums of money which might be obtained if it be eventually determined by this court that performances at hotels come within the purview of the Copyright Act, and that the owners of copyrights are protected against such public performance unless they be given with their consent and upon the payment of an adequate compensation for such performances, and that it is of great importance to such owners of copyrights to have that
11 question finally passed upon and determined, and for the purpose of obtaining such final determination promptly this deponent respectfully applies that this cause may be advanced upon the docket of this court and be set down for a day certain for argument.

WALTER LEROY COGHILL.

Sworn to before me this
13 day of October, 1916.

CHARLES OTT,
Notary Public,
Bronx County, No. 4.
12 Certificate filed in New York County, No. 4.
New York County Register's No. 8011.
Commission expires March 30, 1918.
(SEAL)

Supreme Court of the United States

Supreme Court of the United States

THE JOHN CHURCH COMPANY,
Complainant-Appellant,

against

HILLIARD HOTEL COMPANY and
HENRI DE MARTINI,
Defendants-Appellees.

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

CHARLES J. CAMPBELL, being duly sworn, says that he is one of the attorneys for the defendants-appellees herein, and had charge of the case in the courts below.

This case involves practically the same issues of law that are involved in the case of Victor Herbert *et al.* against the Shanley Company, which is No. 427 on the calendar of this Court and in which a motion was made to advance, upon the same grounds that are alleged in this motion, and on June 5, 1916, was denied by this Court.

Both the Herbert against Shanley case, No. 427, and this case, No. 433, are brought to determine the question whether a performance of copyrighted music in a hotel or restaurant dining room to which no admission fee is charged, and which performance is incidental to the business of the sale

4 and service of food, is a performance for profit, within the scope of the copyright law.

For the reasons stated, if it meets with the approval of the Court, counsel for the defendants-appellees in this case would be very glad to have this case and the Shanley case argued and considered together; and respectfully prays that this case be set down for argument, in due course, at the same time that the Shanley case, No. 427, is heard.

CHAS. J. CAMPBELL.

Sworn to before me this
23rd day of October, 1916.

5 HANNAH R. FRANK,
Commissioner of Deeds,
New York City.
New York County Clerk's No. 234.
New York County Register's No. 18092.
Term expires October 10, 1918.

6